

Order

Michigan Supreme Court
Lansing, Michigan

October 16, 2007

Clifford W. Taylor,
Chief Justice

ADM File No. 2006-04

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
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Justices

Proposed Amendment of Rules 3.204
and 3.212 of the Michigan Court Rules
(Proceedings Affecting Minors and Postjudgment
Transfer of Domestic Relations Cases)

On order of the Court, this is to advise that the Court is considering an amendment of Rules 3.204 and 3.212 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal, or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing. The notices and agendas for public hearings are posted at www.courts.michigan.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated in underlining and deletions in strikeover.]

Rule 3.204 Proceedings Affecting ~~Minors~~ Children

- (A) ~~Unless otherwise provided by statute, original actions under MCL 722.21 et seq. that are not ancillary to any other action must be filed in the circuit court for the county in which the minor resides.~~
- (B) ~~If an action is pending in circuit court for the support or custody of a minor, or for visitation with a minor, Unless the court orders otherwise for good cause, if a circuit court action involving child support, custody, or parenting time is pending, or if the circuit court has continuing jurisdiction over such matters because of a prior action, a subsequent action for support, custody, or visitation with regard to that minor must be initiated as an ancillary proceeding.~~

- (1) A new action concerning support, custody, or parenting time of the same child must be filed as a motion or supplemental complaint in the earlier action. The new action shall be filed as a motion if the relief sought would have been available in the original cause of action. If the relief sought was not available in the original action, the new action must be filed as a supplemental complaint.
 - (2) A new action for the support, custody, or parenting time of a different child of the same parents must be filed as a supplemental complaint in the earlier action if the court has jurisdiction and the new action is not an action for divorce, annulment, or separate maintenance.
 - (3) A new action for divorce, annulment, or separate maintenance that also involves the support, custody, or parenting time of that child must be filed in the same county if the circuit court for that county has jurisdiction over the new action and the new case must be assigned to the same judge to whom the previous action was assigned.
 - (4) A party may file a supplemental pleading required by this subrule without first seeking and obtaining permission from the court. The supplemental pleading must be served as provided in MCR 3.203(A)(2), and an answer must be filed within the time allowed by MCR 2.108.
- (B) When more than one circuit court action involving support, custody, or parenting time of a child is pending, or more than one circuit court has continuing jurisdiction over those matters because of prior actions, an original or supplemental complaint for the support, custody, or parenting time of a different child of the same parents must be filed in whichever circuit court has jurisdiction to decide the new action. If more than one of the previously involved circuit courts would have jurisdiction to decide the new action, or if the action might be filed in more than one county within a circuit:
- (1) The new action must be filed in the same county as a prior action involving the parents' separate maintenance, divorce, or annulment.
 - (2) If no prior action involves separate maintenance, divorce, or annulment, the new action must be filed:

- (a) in the county whose circuit court has issued a judgment affecting the majority of the parents' children in common, or
 - (b) if no circuit court for a county has issued a judgment affecting a majority of the parents' children in common, then in the county whose circuit court has issued the most recent judgment affecting a child of the same parents.
- (C) The court may consolidate actions administratively without holding a consolidation hearing when:
 - (1) the cases involve different children of the same parents but all other parties are the same, or
 - (2) more than one action involves the same child and parents.
- (D) If a new action for support is filed in a circuit court in which a party has an existing or pending support obligation, the new case must be assigned to the same judge to whom the other case is assigned, pursuant to MCR 8.111(D).
- (E) In a case involving a dispute regarding the custody of a minor child, the court may, on motion of a party or on its own initiative, for good cause shown, appoint a guardian ad litem to represent the child and assess the costs and reasonable fees against the parties involved in full or in part.

Rule 3.212 Postjudgment Transfer of Domestic Relations Cases

- (A) Motion.
 - (1) A party, court-ordered custodian, or friend of the court may move for the postjudgment transfer of a domestic relations action in accordance with this rule, or the court may transfer such an action on its own motion. A transfer includes a change of venue and a transfer of all friend of the court responsibilities. The court may enter a consent order transferring a postjudgment domestic relations action, provided the conditions under subrule (B) are met.

- (2) The postjudgment transfer of an action initiated pursuant to MCL 780.151 *et seq.*, is controlled by MCR 3.214.

(B) Conditions.

- (1) A motion filed by a party or court-ordered custodian may be granted only if all of the following conditions are met:
- (a) the transfer of the action is requested on the basis of the residence and convenience of the parties, or other good cause consistent with the best interests of the ~~minor~~ child;
 - (b) neither party nor the court-ordered custodian has resided in the county of current jurisdiction for at least 6 months prior to the filing of the motion;
 - (c) at least one party or the court-ordered custodian has resided in the county to which the transfer is requested for at least 6 months prior to the filing of the motion; and
 - (d) the county to which the transfer is requested is not contiguous to the county of current jurisdiction.
- (2) When the court or the friend of the court initiates a transfer, the conditions stated in subrule (B)(1) do not apply.

- (C) Unless the court orders otherwise for good cause, if a friend of the court becomes aware of a more recent final judgment involving the same parties issued in a different county, the friend of the court must initiate a transfer of the older case to the county in which the new judgment was entered if neither of the parents, any of their children who are affected by the judgment in the older case, nor another party resides in the county in which the older case was filed.

(E) Transfer Order.

- (1) The court ordering a postjudgment transfer must enter all necessary orders pertaining to the certification and transfer of the action. The transferring court must send to the receiving court all court files and friend of the court files, ledgers, records, and documents that pertain to the action. Such

materials may be used in the receiving jurisdiction in the same manner as in the transferring jurisdiction.

- (2) The court may order that any past-due fees and costs be paid to the transferring friend of the court office at the time of transfer.
- (3) The court may order that one or both of the parties or the court-ordered custodian pay the cost of the transfer.
- (~~D~~E) **Filing Fee.** An order transferring a case under this rule must provide that the party who moved for the transfer pay the statutory filing fee applicable to the court to which the action is transferred, except where MCR 2.002 applies. If the parties stipulate to the transfer of a case, they must share equally the cost of transfer unless the court orders otherwise. In either event, the transferring court must submit the filing fee to the court to which the action is transferred, at the time of transfer. If the court or the friend of the court initiates the transfer, the statutory filing fee is waived.
- (~~E~~F) **Physical Transfer of Files.** Court and friend of the court files must be transferred by registered or certified mail, return receipt requested, or by another secure method of transfer.
- (G) Upon completion of the transfer, the transferee friend of the court must review the case and determine whether the case contains orders specific to the transferring court or county. The friend of the court must take such action as is necessary, which may include obtaining ex parte orders to transfer court- or county-specific actions to the transferee court.

Staff Comment: The proposed amendments of MCR 3.204 would consolidate multiple actions involving more than one child of the same parents in a single action so that all issues between the parents can be determined in a single action. The proposed amendments would also require multiple cases involving children of the same parents to be filed in the same county when possible to allow a single judge to consider all support, custody, and parenting time matters involving the same family.

The proposed amendments of MCR 3.212 would require the friend of the court to transfer cases to allow a court to consolidate multiple cases involving different children of the same parents in a single court so that all issues between the parents could be determined in a single action. The proposed amendments also would allow the transferee

friend of the court to take ex parte action to obtain orders to change county-specific orders to the transferee county or circuit.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by February 1, 2008, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2006-04. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 16, 2007

Corbin R. Davis
Clerk